

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION  
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON



Surface Water

(Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)



Ground Water

(Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE July 25, 1984	APPLICATION NUMBER S3-27860	PERMIT NUMBER	CERTIFICATE NUMBER
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NAME STEVEN E. & KATHLEEN L. KELLEN			
ADDRESS (STREET) 10230 North Seminole	(CITY) Spokane	(STATE) Washington	(ZIP CODE) 99208

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Marshall Lake		
TRIBUTARY OF (IF SURFACE WATERS) Pend Oreille River		
MAXIMUM CUBIC FEET PER SECOND 0.02	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 3.0

QUANTITY, TYPE OF USE, PERIOD OF USE

0.02 cubic foot per second, 3 acre feet per year, continuously, for group domestic supply for three camp sites

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL	
1: Lot 30 of Magart's Lakehill Addition; 2: 150 feet north and 350 feet west from the E¼ corner of Sec. 23; 3: 290 feet north and 50 feet west from the E¼ corner of Sec. 23;	

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) All being within the E½E½	SECTION 23	TOWNSHIP N. 32	RANGE, (E. OR W.) W.M. 45 E.	W.R.I.A. 62	COUNTY Pend Oreille
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RECORDED PLATTED PROPERTY

LOT 1: 30	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION) Magart's Lakehill Addition
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

Lot 30, Magart's Lakehill Addition, and that portion of Government Lot 5, Sec. 23, T. 32 N., R. 45 E.W.M. lying southeasterly of Marshall Lake and north of the east-west center line of said Section.



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**DESCRIPTION OF PROPOSED WORKS**

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Three pumps and distribution systems to three lots

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**DEVELOPMENT SCHEDULE**

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BEGIN PROJECT BY THIS DATE:  
Started

COMPLETE PROJECT BY THIS DATE:  
July 1, 2000

WATER PUT TO FULL USE BY THIS DATE:  
July 1, 2001

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**REPORT**

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**BACKGROUND**

An application to appropriate public surface water was submitted by Alice E. Kennedy to the Department of Ecology on July 25, 1984. This application was subsequently assigned to Steven and Kathleen Kellen on October 3, 1997. The application was accepted and assigned Surface Water Application No. S3-27860. The applicant proposes to divert surface water from Marshall Lake in the amount of 0.02 cubic feet per second for group domestic supply for 3 campsites. The proposed points of diversion are to be located within: No. 1) Lot 30 Magart's Lake Hill Addition. No.2) 150 feet North and 350 feet West of the E1/4 corner of Sec. 23, Within the E1/2E1/2. No. 3) 290 feet North and 50 feet West of the E1/4 corner of Sec. 23, Within the E1/2E1/2 of Sec. 23. The proposed place of use will be that portion of Gov. Lot 5, Sec. 23, lying Southeasterly of Marshll Lake and North of the East-West center line of said Sec. and Lot 30, Magart's Lakehill Addition, All Within T. 32 N., R. 45 E.W.M. Pend Oreille County, Washington.

A notice of application was duly published in accordance with RCW 90.03.280; no protests to the granting of a permit to this applicant were received.

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW.

**INVESTIGATION**

James M. Lyerla conducted a field examination on November 23, 1998. The applicant owns three lots on Marshall Lake and is proposing to provide surface water from Marshall Lake to these three sites. There is presently one pitcher pump on one of the lots and the other two lots presently do not have any installed systems. I was unable to reach the applied for lots due to wind downed trees on the access road. The system description was taken from the application. However, the proof of appropriation examination will detail the actual development prior to the issuance of a Certificate of Water Right. The applicant was also a claimant under the Marshall Creek Adjudication. This claimed water right was rejected by the referee and an Adjudicated Certificate was refused.

**CONCLUSIONS**

It is the conclusion of this examiner that: public surface water is available for appropriation for a beneficial use; that group domestic supply for three campsites is a beneficial use; that the appropriation of such water will not impair existing rights or be detrimental to the public welfare.

This application for a public surface water permit should be approved in the amount of 0.02 cubic feet per second, 3 acre feet per year, for group domestic supply for three campsites, subject to the following provisions:

"An approved measuring device shall be installed and maintained in accordance with RCW 90.03.360 and/or WAC 508-64-020 through WAC 508-64-040." (Installation, operation and maintenance requirements attached hereto).

"The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used and required."

The water source and/or water transmission facilities are not wholly located upon the land owned by the applicant. Issuance of a permit by this Department for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtainment of such right is a private matter between applicant and owner of that land.

"This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise."

"A certificate of water right will not be issued until a final examination is made."

"Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations."



The construction of the facilities for the appropriation of water under the application may require removal of material from or adjacent to a stream channel or watercourse. A Hydraulic Approval may be obtained from the Department of Fish and Wildlife prior to commencing work.

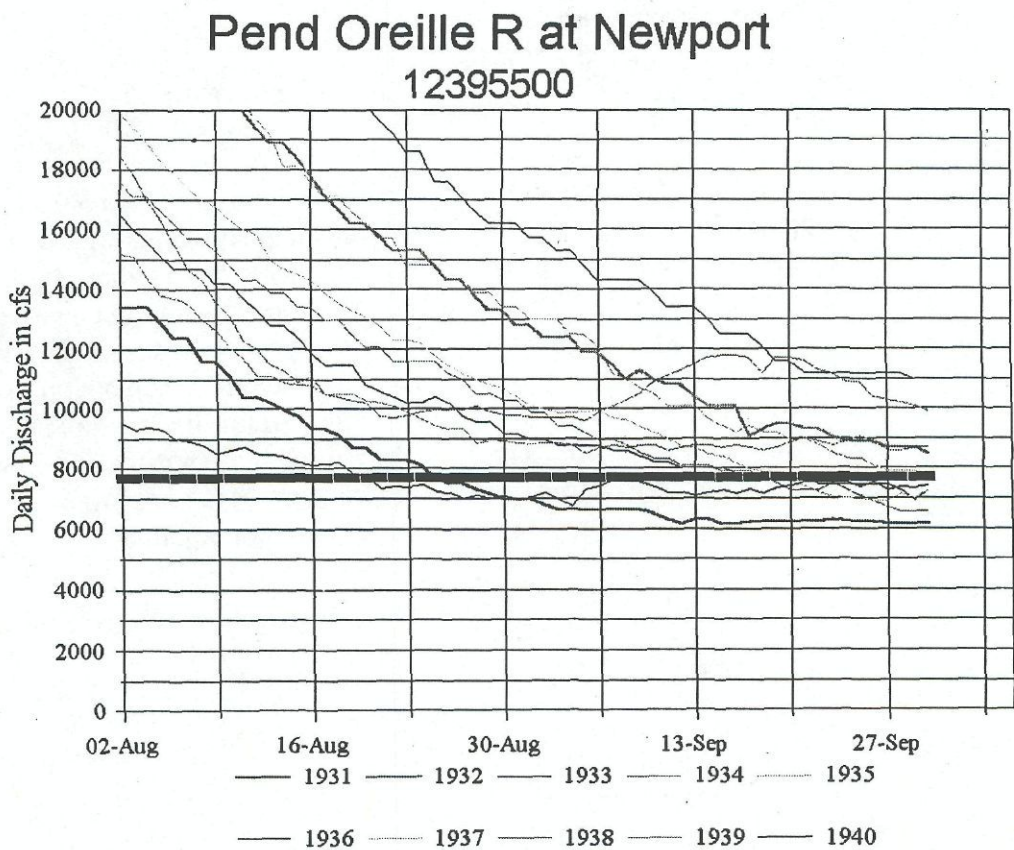
In accordance with the recommendations of the Department of Fish and Wildlife, the permit shall be issued subject to the following provision(s):

“This permit shall be issued subject to Washington Department of Fish and Wildlife screening criteria as outlined in a Hydraulic Project Approval. Please contact the Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091, Attention: Habitat Management Division, Phone (360) 902-2534, to obtain specific requirements for your project.”

“Use of water under this authorization shall be contingent upon the water right holder’s utilization of up to date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.”

“The Washington State Department of Fish and Wildlife (WDFW), has recommended that water rights from the Pend Oreille River be conditioned with instream flows of 7,700 cubic feet per second (cfs) on a year-round basis (as measured at the gage near Newport, Washington).

The following hydrographs for the U.S.G.S. Gage on the Pend Oreille River at Newport, Idaho (12395500) demonstrate important hydrologic characteristics of the Pend Oreille River. Before the construction of the Albeni Falls Dam, the river exhibited normal, riverine flow conditions. The first hydrograph shows the typical late summer flow regime for 10 different water years in the 1930s and early 1940s. The solid line at 7700 cfs represents WDFW’s recommended instream flow value as it would have applied to the river in the 1930s. When summer flows reached their baseflow, they tended to stay down at that level for the remainder of the water year.

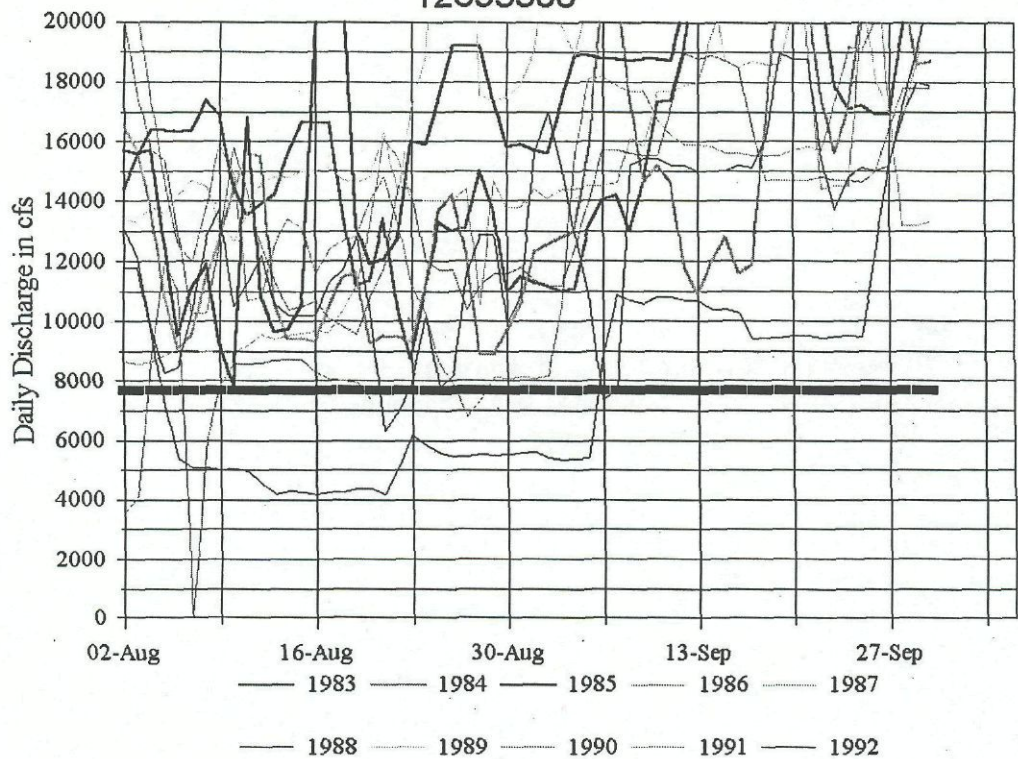


With the construction of the Albeni Falls dam in 1952, the character of the daily discharge changed dramatically from a riverine regime to an impounded, highly regulated, flow regime. The next hydrograph depicts the late summer, daily average discharge for a ten-year period in the 1980s through the early 1990s. The highly variable discharge data reflects the flows that result from the power generation demands that are placed on the river.



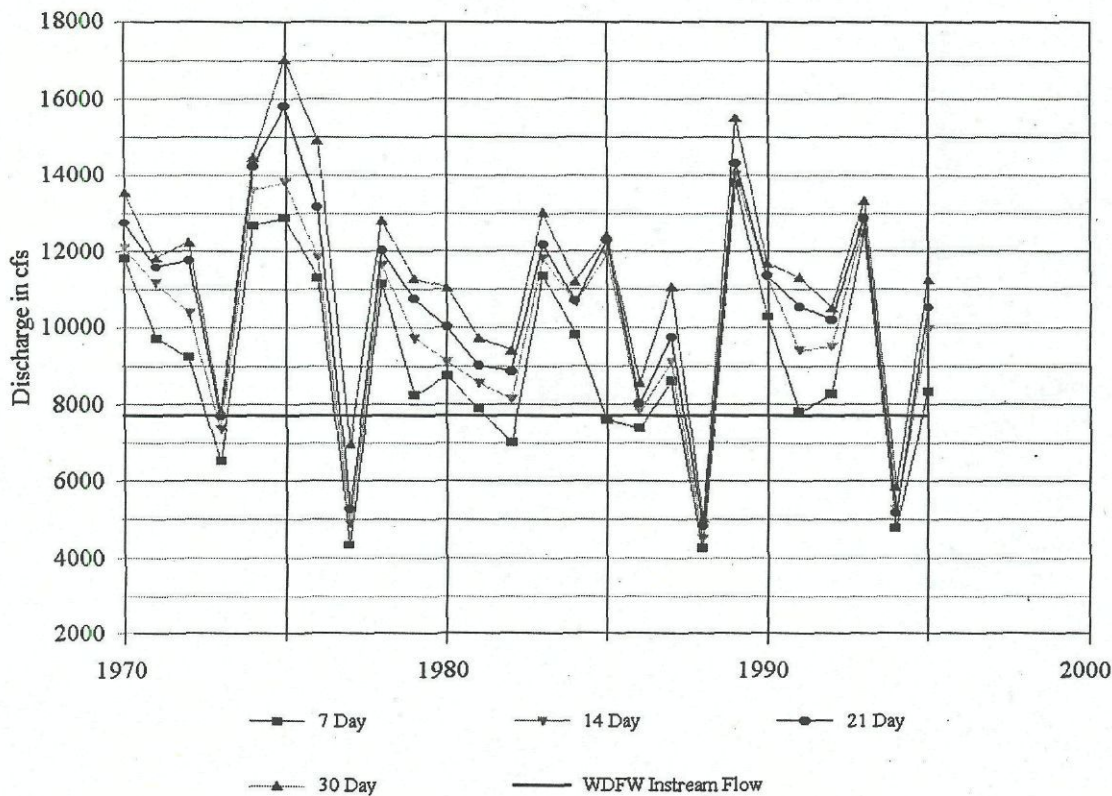
Pend Oreille R at Newport

12395500



Trying to devise a methodology to implement the WDFW recommended instream flow given the current flow regime of the river requires some careful consideration of the day-to-day variability of the discharge. Given its fluctuations, just simply regulating junior water rights every time the daily average flow drops below 7700 cfs (the recommended instream flow) would be inappropriate and unworkable. Examining the data in the hydrograph indicates that the day-to-day variability is on the order of 5,000 cfs. Looking at a suite of duration frequency low flow analyses (7-day, 14-day, 21-day, and 30-day) for the 1970 through 1996 period allows us to get a better handle on when the flow in the river is truly flowing at a rate that is below the recommended instream flow. By looking at the actual daily flow data, we can see that three water years during the period 1970 – 96 exhibited sustained, low flow periods that were lower than the 7700 cfs threshold (1977, 1988, and 1994). The data from the duration frequency analysis shows that using a 14-day low flow criteria gives us the best opportunity to identify the low flow events.

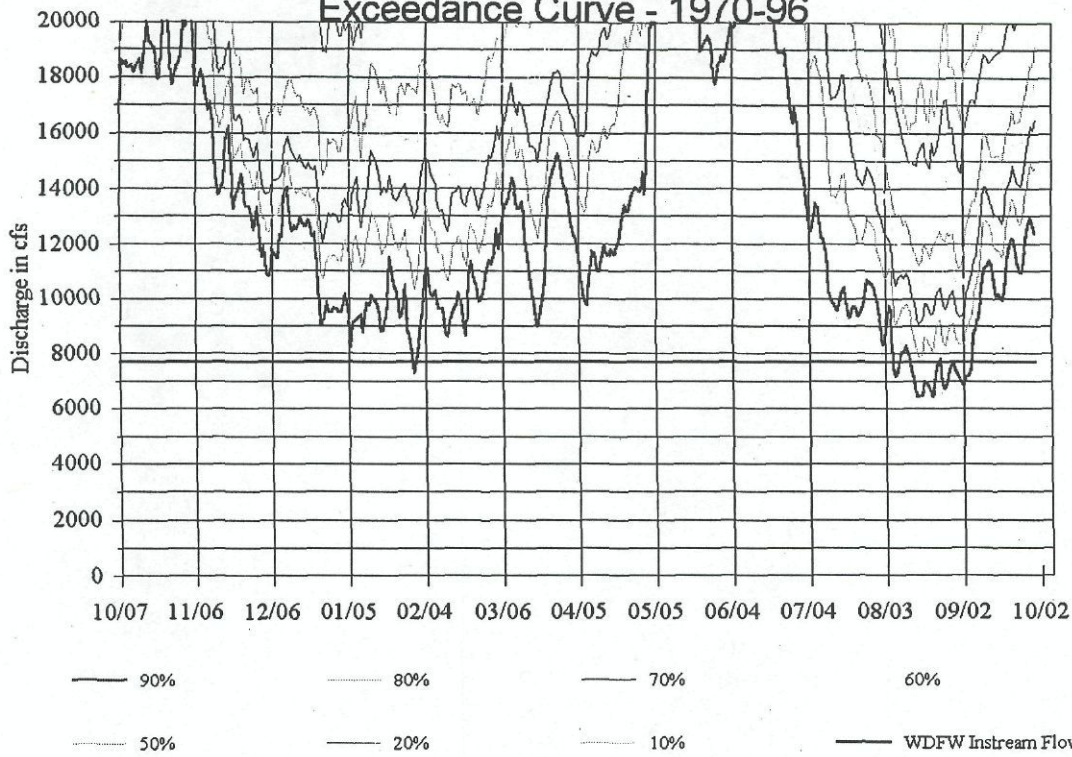
Pend Oreille River Low Flow Analysis



Calculating the exceedance probability for the daily average flows for the period 1970 – 96 allows us to see how frequently (on a yearly basis) and for what duration (how many weeks during each year) the flows on the Pend Oreille River can be expected to be below the recommended instream flow. The following graph demonstrates that on average, we can expect the summer low flows in the Pend Oreille River will be above the instream flow 8 to 9 times out of ten years. During that one in ten year event when the flow in the river is below the recommended flow, the low flow will last for approximately one month (typically August).



# Pend Oreille R at Newport Exceedance Curve - 1970-96



Therefore, this permit shall be conditioned that all diversion shall cease when the 14-day average flow in the Pend Oreille River falls below 7700 cfs (as measured at the Pend Oreille River at Newport gage) as recommended by WDFW."

Signed at Spokane, Washington  
this 25th day of June, 1999

*James M. Lyerla*  
JAMES M. LYERLA  
Water Resources Program  
Department of Ecology



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N. Monroe, Suite 202 • Spokane, Washington 99205-1295 • (509) 456-2926

June 25, 1999

Mr. & Mrs. Steven E. & Kathleen L. Kellen  
10230 North Seminole  
Spokane, WA 99208

Dear Mr. & Mrs. Kellen:

Re: <sup>Surface</sup> Ground Water Application No. S3-27860

Enclosed please find a copy of the Department of Ecology's Report of Examination. This report constitutes our determination and order regarding the above referenced application.

Your application has been approved and a permit will be issued in accordance with the enclosed Report of Examination upon payment of the statutory fee of \$20.00. Please remit your payment by check to the Department of Ecology within thirty (30) days from receipt of this letter.

Issuance of this Report of Examination is an appealable decision under Chapter 43.21B RCW. If you would like to appeal this order and determination, you must file your appeal with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903 within thirty (30) days of the date of mailing of this letter and the enclosed Report of Examination. A copy of your appeal must also be sent to the Department of Ecology, Water Resources Program Appeals Coordinator, P.O. Box 47600, Olympia, WA 98504-7600 within thirty (30) days of the date of mailing of this letter and the enclosed Report of Examination.

Sincerely,

George B. Schlender  
Section Manager  
Water Resources Program

GBS:kt  
Enclosures

